

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN  
DISTRICT OF TENNESSEE AT KNOXVILLE

---

JOHN SMITH,

Plaintiff,

vs.

BOSTON SCIENTIFIC CORPORATION  
and its predecessors GUIDANT  
CORPORATION and GUIDANT SALES  
CORPORATION,

Defendants.

ORDER

Case No. 3:09-cv-40

---

On October 24, 2012, the court held a hearing on the Plaintiff's Motion to Amend the Complaint and the Defendants' Motion to Dismiss in the above-captioned matter. Upon review of the pleadings and the record as a whole, and after hearing arguments of counsel, the court finds that the Plaintiff's Motion to Amend (Dkt. No. 21) should be GRANTED, and therefore the operative document for purposes of the hearing on the Defendants' Motion to Dismiss is the Amended Complaint (Dkt. No. 21-1). The court further finds that the Defendants' Motion to Dismiss (Dkt. No. 15) should be GRANTED, without prejudice, and Plaintiff shall be permitted to seek leave to file a Second Amended Complaint.

The Court directs that Plaintiff's Motion for Leave to File a Second Amended Complaint and supporting memorandum specifically plead the factual basis for any alleged manufacturing defect(s) and specifically identify the statements and/or marketing materials provided or made to

Plaintiff's physician that went beyond the FDA-approved marketing materials. Plaintiff shall file his Motion for Leave to File a Second Amended Complaint within two months, on or before December 24, 2012. Defendants shall be allowed 14 days to file any response in opposition to the Plaintiff's filing of his proposed Second Amended Complaint.

SO ORDERED this 31st day of October, 2012.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

---

TENA CAMPBELL  
United States District Judge